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COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the Child
on involvement of children in armed conflicts
Fourth session
Geneva, 2-13 February 1998

COMMENTS ON THE REPORT OF THE WORKING GROUP

Report of the Secretary-General

Addendum

The present document contains a summary of the comments submitted by the Governments of Israel and Lebanon, by the Council of Europe and by the Friends World Committee for Consultations (Quakers).

GE.98-10215 (E)

Israel

[Original: English]
[5 January 1998]

1. Israel welcomes the initiative to add an optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflict. It regards the issues related to the involvement of children in armed conflict as extremely important. In addition, it considers the protocol a new approach as it touches both the law of peace and the laws of war. Therefore special attention and consideration should be given to its formulation.

2. The following are amendments which Israel proposes to introduce to the current draft, as well as a number of issues which require, in its opinion, further elaboration and clarification. Israel reserves the right to raise further issues in the course of the work on the draft protocol.

(a) Preambular paragraph 7:

(i) Replace the words "human rights" by the words "applicable international human rights and humanitarian law", so as to read "... applicable international human rights and humanitarian law instruments ...". Explanation: since the draft protocol deals with the situation during an armed conflict, which may be influenced by the laws of armed conflict, it would be appropriate to add international humanitarian norms as an applicable source of law to be observed;

(ii) Delete the words "and foreign occupation" so as to read "... in particular during armed conflicts". Explanation: the two basic opposable situations are peace and armed conflict. There is no need to introduce other factors that are not particularly pertinent to the issue at hand;

(b) Article 1:

(i) Replace the word "hostilities" by the words "armed conflict". Explanation: hostilities is not a term of international law, and its scope is too wide for it to be incorporated in a binding instrument;

(ii) Retain the number 17. Note: Israel assumes that the calculation of ages for the purposes of this article and other articles of the proposed protocol is to be conducted in accordance with the calendar used by each State and in accordance with any relevant rules laid down by law as to the calculation of ages;

(c) Article 2, paragraph 2: retain the number 17, so as to read "... persons who have not attained the age of 17 years are not voluntarily recruited ...";

(d) Article 2, paragraph 4: in order to take a position on this article, further clarification is necessary with regard to the status of students in institutions under the administration of military authorities;

(e) New article A: delete the words "involved in hostilities", so that the sentence will end after the words "armed groups".

(f) Article 4: the choice between the first and second options depended on the outcome of other articles, especially 1 and 2. At this point Israel cannot express a preference for either. The third option is redundant and can be deleted;

(g) New article D: delete the entire article. Explanation: Israel would object to the adoption of a protocol that allows the Committee on the Rights of the Child to conduct inquiries into recruitment policies and practices of the States parties - policies and practices which are closely tied to the safety and well-being of recent and future inductees. A wide-ranging inquiry into these practices has the potential to compromise the security of those servicing in the armed services, and may pose a serious risk regarding the security of those approaching recruitment age as well;

(h) Article 6: the purpose of this article is not clear. If it is intended to indicate that the proposed protocol does not prejudice the application of the Convention, it should be stated in more exact terms. The current wording implies that the protocol will automatically apply to all States parties to the Convention;

(i) Article 9, paragraph 1: delete the last sentence, so that the paragraph will end after the words "United Nations". Explanation: the moment at which an armed conflict ends is often hard to determine. Therefore, suspension of the denunciation of a State until the end of an armed conflict introduces a fact of uncertainty, which is harmful for the functioning of the proposed protocol. Furthermore, an armed conflict could, in certain cases, continue for a lengthy period of time, in which case a State would, in practical terms, be prevented from denouncing the protocol. Such a result is contrary to the purpose of the article.

Lebanon

[Original: Arabic]
[15 September 1997]

Age

1. Article 1 of the Convention on the Rights of the Child defines a child as every human being below the age of 18 years. This precludes the bearing of arms by children for military purposes and, consequently, permits enlistment in military forces only after that age has been attained. The aim is to achieve harmonization and prevent any participation whatsoever, since involvement of children in military operations outside the battlefield could entail the same degree of danger to which participants might be exposed in actual military operations. Moreover, it is difficult, if not impossible, to distinguish between direct and indirect involvement.

2. This view is consistent with the Geneva Conventions and with article 38, paragraph 2, of the Convention on the Rights of the Child, which used the expression "take a direct part in hostilities".

Acceptance

3. It is inadmissible to use voluntary enlistment as a pretext for derogations from the minimum age of 18 years. This also applies to children whose family or guardians might agree to allow them to bear arms, since experience has shown that, in many cases, such persons have exploited the situation by persuading their children to participate in military operations for financial gain or other purposes of their own.

4. To this end, it would be in the best interests of children to effectively oppose the recruitment of children by non-governmental armed groups.

5. The States parties to the Convention should comply with its provisions by refraining from making any reservations or from resorting to the use of children in other than armed groups, such as civil defence or local or border guards, in order to force them to use military weapons in one way or another.

Conclusion

6. Taking into account the above brief comments and observations, we see no objection to approval of the main principles contained in the draft pending its finalization at which time, after further consideration, the necessary action should be taken in the light of the best interests of Lebanese children.

Council of Europe

[Original: French]
[7 November 1997]

1. The European Social Charter provides for the minimum age of admission to employment shall be 15 years (art. 7, para. 1). It does so with the aim of effectively protecting minors aged less than 15 against the risks of admission to work that may adversely affect their health, morals, development or education.

2. There are two exceptions to this rule, and they must be seen in the light of the above aim:

(a) Minors aged under 15 may, under certain conditions, be permitted to perform "prescribed light work", meaning work that will be without harm to their health, morals, development or education (art. 7, para. 1). This exception is not relevant to the area covered by the draft protocols;

(b) A higher minimum age of admission to employment must be set for "prescribed occupations regarded as dangerous or unhealthy" (art. 7, para. 2). The Social Charter does not specify what that age should be, but the independent committee of experts referred to in article 25 of the Charter has

chosen 18 years as the threshold for manifestly dangerous or unhealthy occupations comprising a risk to which adolescents are particularly vulnerable.

3. Furthermore, in the Social Charter (Revised), article 7, paragraph 2, has been amended and expressly sets the minimum age of admission to employment with respect to prescribed occupations regarded as dangerous or unhealthy at 18 years. This provision does not preclude the possibility of providing that young persons who have not attained that age may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons (art. 7, para. 2, annex).

4. Given these European rules and with a view to the effective and consistent combating of the trend towards the recruitment and training of children and young people for employment in armed conflicts, the Council of Europe favours setting the minimum age for enrolment, whether voluntary or involuntary, in armed forces at 18 years because such activities necessarily comprise a risk that children and young people will be exposed to dangers manifestly liable to damage their health, morals, development or education. Although enrolment may be voluntary, the minimum age requirement should never be set aside except in connection with activities strictly linked to vocational training or to instruction in armed forces establishments.

Friends World Committee for Consultations (Quakers)

[Original: English]
[28 November 1997]

1. Friends World Committee for Consultation (Quakers) submits the following comments on behalf of the NGO Subgroup on Refugee Children and Children in Armed Conflict (a subgroup of the NGO Group for the Convention on the Rights of the Child).

2. The research and field programmes in which the non-governmental organizations are involved inform our responses to the report of the working group on the draft optional protocol. We welcome the progress which has been made so far on the draft optional protocol and the generally positive approach of the working group to seeking to raise the minimum age of recruitment into armed forces and participation in hostilities to 18 years, while regretting the intransigence which led to the failure to agree to a minimum age of 18 years for participation in hostilities at the last session of the working group.

3. We fully support the position of the Committee on the Rights of the Child, as stated in the report, "that persons below the age of 18 years should never be allowed to be involved in hostilities, either directly or indirectly, as such involvement was physically and psychologically harmful to children and affected the full enjoyment of their fundamental rights; that persons below the age of 18 should neither be recruited on an involuntary basis nor allowed to enlist as volunteers into the armed forces of States parties or non-governmental armed groups" (para. 43).

4. We wish to make the following specific comments on the text of the draft optional protocol as it appears in the annex to the report of the working group.

5. We welcome the fact that the whole text of the preamble was agreed at the last session.

6. Draft article 1. We support the wording for draft article 1, with the deletion of "17" and "a direct", so that it would read: "States parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years do not take part in hostilities." The protection from involvement in hostilities is the fundamental purpose of the draft optional protocol. It is, therefore, essential that this article is clear, strong and in line with the recommendation referred to in preambular paragraph 6, including a specific age, which should be 18 years, and that the nature of participation in hostilities not be unduly limited.

7. Draft article 2. We welcome the total prohibition of compulsory recruitment of under-18-year-olds into governmental armed forces as stated in draft article 2 (1). However, we also oppose the voluntary recruitment of those under 18 years, even with the requirements of free consent of the child and of the parents or legal guardians. In many circumstances the degree of voluntariness is seriously open to question: many forms of pressure lead young people to join armed forces and the requirement of parental or other consent is not an adequate safeguard and may be irrelevant. Secondly, the reasons for raising the minimum age to 18 years are not only associated with recruitment methods but with the physical, psychosocial and emotional impact on the young person, the teaching of military skills and attitudes and the deprivation of opportunities to develop educational and social skills more appropriate for civilian life. Thirdly, the presence of younger soldiers in the armed forces raises questions about the effectiveness of the prohibition on the participation in hostilities of those under 18 years. Although some Governments which currently accept younger volunteers have systems intended to prevent under-18s becoming involved in hostilities, no system is foolproof. As long as these "young soldiers" are in the armed forces there will be a temptation to use them, and in any case they are liable to attack. Finally, if Governments reserve the right to recruit those under 18 years, the reality is that a ban on recruitment of under-18s by non-governmental armed groups is unlikely to be effective.

8. It is our understanding that if pupils in military schools or other establishments are not members of the armed forces, the minimum age for their enrolment does not come within the scope of the draft optional protocol. We therefore oppose draft article 2 (4) since this constitutes a form of recruitment into the armed forces to which all the preceding points apply. The only justification for this provision is, therefore, that it would allow Governments to recruit below the age of voluntary recruitment (yet to be agreed) in draft article 2 (2) and by insisting that such recruits are placed in separate establishments might provide some protection against their participation in hostilities.

9. We welcome the inclusion of a draft article prohibiting the recruitment of under-18s into non-governmental armed groups, although the current wording of draft new article A could be improved. If the present approach of addressing the obligation of States parties is maintained rather than that of placing an obligation on each party to a conflict, we suggest: "States Parties shall take all feasible measures to prevent recruitment of persons under the age of 18 years by non-governmental armed groups."

10. Draft article 8. We welcome the agreement that 10 should be the number of States parties required to bring the protocol into force.

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Addendum

The present document contains a summary of the comments submitted by the Government of Australia.

[Original: English]
[26 January 1998]

1. The Australian Government has always been a strong supporter of the development of an optional protocol to the Convention on the Rights of the Child on the protection of children in armed conflict, and has participated actively in the working group negotiating the text of the protocol. In light of the disturbing indications of widespread involvement of children in conflicts currently taking place around the world, the Australian Government considers it a priority to support efforts, including the development of this protocol, aimed at improving the international legal protection available to children in the context of armed conflict. In this context Australia was very disappointed that the working group was unable to conclude the drafting of the protocol at its third session, held in Geneva in January 1997. With only a few issues remaining to be resolved, it is the Australian Government's view that States involved in the negotiations should make every effort to complete the drafting of the protocol at the next session of the working group.

2. The Australian Government welcomed the considerable efforts of the Chair at the third session of the working group to achieve progress in the negotiations. His initiative in preparing a Chair's "perception text" was very useful given the working group's inability to reach agreement on a number of important elements in the text.

3. While much of the Chair's text was likely to be broadly acceptable, further work still needs to be done on issues such as the age of conscription, on a reservations article, and on ensuring that any exception for military schools is narrowly construed and consistent with the minimum age for voluntary recruitment ultimately adopted in the protocol. The Australian Government would encourage the Chair to work with interested Governments in the lead up to the next session of the working group to develop consensus on these and the other remaining issues.

4. In relation to specific elements of the draft annexed to the report of the working group at its third session (E/CN.4/1997/96), the Australian Government would make the following comments. In article 1, Australia supports the age of 18 for participation in hostilities, and considers that at the last session of the working group it was apparent that there was overwhelming support for 18 years. Australia would also prefer that the prohibition on participation in hostilities take the widest possible form, by deletion of the word "direct", so as to encompass the possibility that children who do not take a direct role but who are nonetheless inevitably caught up in conflict are protected by the protocol.

5. In relation to article 2, the Australian Government strongly supports the age of 18 for conscription, which appears in the current text, and considers that this should not be altered. In relation to voluntary recruitment, the Australian Government continues to support a minimum age of 17 years. On the possibility of an exception for military schools, Australia considers it essential that it be narrowly construed and consistent with the minimum age for voluntary recruitment.

6. On other issues, the Australian Government supports retention in the protocol of a reference to recruitment of children by non-governmental groups. The Australian Government also retains its preference for an article which provides that no reservations to the protocol are permissible, given that the protocol is itself optional.